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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/014,727	12/10/2001	David Hedman	871870-6	6900
23879	7590	01/12/2004	EXAMINER	
BRIAN M BERLINER, ESQ O'MELVENY & MYERS, LLP 400 SOUTH HOPE STREET LOS ANGELES, CA 90071-2899			ROWAN, KURT C	
		ART UNIT		PAPER NUMBER
				3643

DATE MAILED: 01/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. <b>10/014,727</b>	Applicant(s) <b>HEDMAN et al.</b>
	Examiner <b>KURT ROWAN</b>	Art Unit <b>3643</b>



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1)  Responsive to communication(s) filed on Sept 17, 2003 and Oct 27, 2003
- 2a)  This action is FINAL.      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.
- Disposition of Claims**
- 4)  Claim(s) 18-35 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 18-35 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12)  The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some\* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a)  The translation of the foreign language provisional application has been received.
- 15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                              | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ | 6) <input type="checkbox"/> Other: _____                                    |

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## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on Sept. 17, 2003 has been entered.

### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground

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provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 18-35 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,327,812. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are obvious in view of the previously patented claims since the same method steps are recited such as preparing the enclosure, positioning a plurality of temperature probes, providing at least one ingress duct, heating an environmentally acceptable gas, directing the heated gas into the enclosure, monitoring the temperature from the probes, recording the temperatures from the probes, establishing at least a slight positive pressure within the enclosure, and venting the heated gas from the enclosure.

#### ***Terminal Disclaimer***

The terminal disclaimer filed on December 23, 2002 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US 6,272,522 has been reviewed and is NOT accepted.

The terminal disclaimer does not comply with 37 CFR 1.321(b) and/or © because:

The person who has signed the disclaimer has not stated the extent of his/her interest, or the business entity's interest, in the application/patent. See 37 CFR 1.321(b)(3).

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***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 32 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 32 depends from itself which is improper. For the purposes of this Office Action, claim 32 is taken to depend from claim 31. Please clarify/correct.

***Claim Rejections - 35 U.S.C. § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 20-23, 26-30, 33, 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forbes '329.

The patent to Forbes shows a method for killing organisms in Fig. 1 by preparing the enclosure having an exterior and an interior by covering with an insulating mat 20. Forbes provides at least

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one ingress duct 41 communicating with the interior of the enclosure 40, directing a heated gas into the enclosure to raise the temperature of the enclosure to a lethal temperature. Forbes discloses heating with nitrogen which is an environmentally acceptable gas. Forbes monitors the temperature in the enclosure in real time as disclosed in column 4, lines 51-64, but does not disclose a plurality of temperature probes at predetermined locations in the enclosure. Forbes establishes a slight positive pressure since a fan 27 blows in the heated gas. Forbes vents the heated gas through hose 42 from the enclosure. In reference to claim 20, Forbes shows all of the elements recited with the exception of the plurality of temperature probes and removing or protecting heat sensitive items. Forbes discloses one probe. At any rate, it would have been obvious to employ more than one probe to monitor the temperature for multiplied effect. That is to insure that all locations are raised to a temperature that is lethal to the target organism. Also, it would have been obvious to remove heat sensitive items from the enclosure to prevent damage. Forbes has moving gas to remove remains of organisms from the enclosure. In reference to claim 21, Forbes discloses 120 degrees F. In reference to claim 22, Forbes does not disclose a console outside the enclosure for monitoring the temperature, but it would have been obvious to connect the probes to a central console to easily keep track of all the temperatures in real time in the enclosure. In reference to claim 23, Forbes discloses killing insects. In reference to claim 26, 30, Forbes does not disclose killing fungi, molds and bacteria. Forbes discloses killing insects. However, it would have been obvious to kill other toxic organisms which are health hazards.

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besides insects such as aspergillus oryzae, aspergillus since the purpose is the same. In reference to claim 27, Forbes discloses 120 degrees F. In reference to claim 28, Forbes does not disclose a plurality of temperature indicating probes, but does disclose one. Given one it would have been obvious to employ more than one for multiplied effect. See *In re Harza*, 124 USPQ 378. In reference to claims 33 and 35, Forbes shows at least one ingress duct 29, 41 communicating with the interior of the enclosure. Forbes discloses using fans to ckeep the tempertures uniform, but would have been obvious to move the duct if the temperature probes showed that there was not a uniform temperature within the enclosure since the function is the same and no stated problem is solved.

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8. Claims 18-19, 24-25, 31-32, 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forbes as applied to claims 20-23 above, and further in view of Montellano.

The patent to Forbes shows a system for sanitizing an enclosed structure having an interior and an exterior as discussed above. Forbes does not disclose an extraction unit in communication with the enclosed structure. The patent to Montellano shows a system for sanitizing an enclosed structure having an extraction unit 2, 3 in communication with the enclosed structure as shown in Fig. 1. The baffle of metallic cloth 3 removes killed organisms as stated in lines 53-55 of page 1 from within the enclosed structure. In reference to claims 18, 24, it would have been obvious to provide Forbes with an extraction unit as shown by Montellano for the purpose of purifying the air as disclosed by Montellano in column 2 of page 1, lines 53-61. In reference to claims 19 and 25, Montellano shows an egress duct 6. In reference to claims 31 and 34, Forbes discloses one temperature probe but it would have been obvious to employ several for multiplied effect. See *In re Harza*, 124 USPQ 378. Forbes does not disclose a control unit electrically connected to the probes, but it would have been obvious to connect all the probes electronically to a control unit for the purpose of simultaneously keeping track of temperatures at desired locations at the same time to maximize the efficiency of the extermination system and method. In reference to claim 32, see the rejection of claims 33, 35, above.

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9.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **KURT ROWAN** whose telephone number is (703) 308-2321.

The examiner can normally be reached on Monday-Thursday from 6:30 a.m. to 5:00 p.m.

The fax phone number for the organization where this application or proceeding is assigned is (703) 306-4195 or (703) 305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



**KURT ROWAN**

**PRIMARY EXAMINER**

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January 10, 2004